

SOUTH DELTA WATER AGENCY

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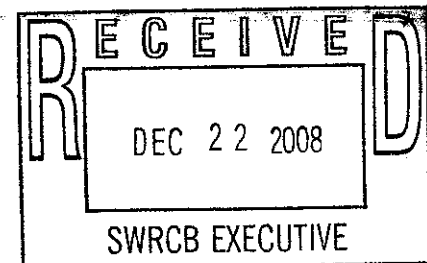
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December 22, 2008

Via E-Mail commentletters@waterboards.ca.gov

Ms. Jeanine Townsend, Clerk to the Board
Executive Office
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100



Re: Draft Recycled Water Policy

Dear Board Members:

On behalf of the South Delta Water Agency I would like to submit the following comments to the draft Recycled Water Policy ("draft Policy") recently released for public review and comment. I suggest the Board schedule at least one more workshop for public input before considering adopting the Draft Policy. There appear to be some serious misconceptions underlying the draft Policy which should be fully discussed before the Board considers the matter.

1. Preamble.

The Preamble has a number of mistakes. First, it makes the currently in vogue statement of "failing levees" in the Delta. This is one of those mantra-like statements that government feels the need to make in order to sound popular. As someone who regularly works with those responsible for maintaining Delta levees, it is grossly inaccurate to make such statements. There are always areas where additional levee work needs to be done, and the local Reclamation Districts are constantly making efforts to address these needs. The Delta is not teetering on the edge of destruction due to poor levees. The "failing levees" claim is a part of the argument made by the peripheral canal proponents, and at best an arguable point.

The SWRCB is not charged with making policy regarding how and where to develop the additional supplies which may be needed for California's future. Rather it is to adopt policies which fulfill and expedite the duties given to it by the Legislature. In this time of California's financial crisis when ongoing bond projects are being cancelled, it is both unrealistic and irresponsible to suggest/mandate new costs and obligations on other public entities or the public in general. This is especially so when the suggestions/mandates are ill founded. The draft Policy continues the fallacy that conservation and recycling are necessary beneficial. In the San Joaquin system, virtually all conserved water or recycled water activities produce a decrease in the available supply downstream. "Saving" a gallon of water on the upper end of the system simply means there is less reaching the Delta or entering a ground water system. Such "savings" also result in the concentration of constituents like salt. By encouraging conservation and recycling we shift a shortage (not increase supply) and to exacerbate salinity management (a topic addressed elsewhere in the Policy).

Statements like "declaring our independence from the vagaries of annual precipitation" should not be a substitute for a real analysis of possible future precipitation projections (current models are evenly split on whether there will be more or less rainfall) or an analysis of currently available supply, needs, and priority of rights. Setting "goals" or "mandates" for recycled water or storm water usage are fundamental decisions dealing with urban and business costs. Not only is this the wrong financial climate to make such policies, but the draft Policy fails to show any substantiated basis for these numbers.

2. Benefits of Recycled Water.

This section "finds" that the use of recycled water (with certain prerequisites) has a beneficial impact. Such a statement cannot be supported. Any analysis of the San Joaquin (and other systems) shows that the opposite is true in many circumstances. Unless the water previously not being recycled was lost to beneficial use, "reusing it" removes it from the the supply of water used by other beneficial users. It is time that agency charged with regulating water quality and water rights acknowledged this.

4. Mandate for the Use of Recycled Water.

Under subpart a, the Board appears to go well beyond its statutory obligations when it requires water agencies to sell their recycled water to other who might use it. First, this policy will actually increase use and demand of water. Second, it ignores how the water was being used and what beneficial uses benefitted from it absent the mandated transfer. What if the water was providing downstream flow in the river or in the Delta? Third, there appears to be no basis for the SWRCB to "require" someone to sell it drainage or recycled water. Such a policy conflicts with current law which allows a city to divert an amount of water equal to that which it discharges.

The draft Policy "declares" it to be an unreasonable use of water by water agencies when such a supply is available. Though the draft Policy cites Water Code Section 13550, that section is much more limited. When the Legislature encouraged use of recycled water for certain limited uses, it set forth the criteria by which any reasonableness finding would be judged. Those criteria include costs, public health, downstream rights, etc. This analysis is wholly absent from the draft Policy finding of unreasonable use. Given the wide range of factual situations, the draft Policy declaration is unsubstantiated.

The section "assumes" sufficient capital funding for recycled projects. This assumption highlights why the draft Policy should not be adopted.

6. Salt/Nutrient Management Plans.

Although this portion of the draft Policy appears to be a method of heading off future problems, it is not clear how necessary the policy is or how it could actually function. If there are ground water basins suffering from, or threatened by salinity buildup, those specific problems should be addressed through the normal regulatory and legal processes. Other basins which are not threatened do not seem to need a "new" regulatory framework which will require the expense of limited funds.

In addition, it would not seem realistic to treat all basins the same under a regulatory framework. Closed basins, which have discrete and identifiable inputs could be treated one way, but other basins which are affected by numerous sources, activities and other basins are significantly different as to require a different approach. It would be nearly impossible for some lower San Joaquin basins to develop a salt plan given that neighboring interests are the source of the salts and uninterested in placing further burdens on themselves. The better approach is to have the regulators set water quality standards and enforce them; something the SWRCB and CVRWQCB appear to be wholly incapable of doing. Rather than place a burden on Delta and San Joaquin County interests, the SWRCB and CVRWQCB should act now to clean up the River.

Further, it is not clear how or why some basins should develop plans. In particular, the southern Delta overlies a ground water basin which contains water too salty for most any use. Is this area to spend money to tell the Board its ground water is unuseable or must it describe how to accomplish the impossible of cleaning it up? How might this basin address the issue of someone else's introduced salt constantly impacting the ground water?

The draft Policy appears to be a significant expansion of Board authority, not supported by the law. Ground water regulation is not within the purview of the boards, excepting as to any particular instances of pollution. The draft Policy seeks to make the Board the overseer of otherwise lawful practices not regulated by it. It should be noted that monitoring a ground water

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basin is a task well beyond any current funding mechanism. In San Joaquin County there can be ground water areas in close proximity, one of which has 25,000 year old water which is shallower than 40 year old water. The magnitude of a system which could identify, much less monitor this is indescribable.

Although the draft Policy is intended to address ground water issues, it's language clearly includes the need to monitor and regulate surface water. This approach then confuses and adds an un-needed layer of regulation. It would be better for the SWRCB and CVWQCB to simply develop and enforce the water quality objective and TMDL processes. As stated above, this new approach will take longer and be much less effective than enforcing the current laws and regulations. The Board should immediately enforce the southern Delta water quality objectives. No reasonable excuse exists for the current abdication of responsibility.

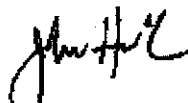
9. Antidegradation.

The proposals set forth in this section should not be considered for adoption until parties (such as NSJWCD, SEWD, and San Joaquin County) who are considering ground water storage projects are included in the discussion. I do not know how the stakeholder process was constituted, but local interests have not been involved.

SDWA strongly recommends that the SWRCB not adopt the draft Policy. Significant additional discussion and additional parties are needed. Recycling and conservation sound good to the public, but are not good in practice in many areas.

Please call me if you have any questions or comments.

Very truly yours,



JOHN HERRICK

JH/dd

cc: Dr. Mel Lytle
Jeannie Zolezzi, Esq.
Kama Harrigfeld, Esq.